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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

American Rena International Corp., a California corporation; WanZhu “Kathryn” Li, an individual; and Robert M. Milliken, an individual.

Plaintiffs,

VS.

Sis-Joyce International Co., Ltd., a California corporation; Alice "Annie" Lin, an individual; Robert Simone, an individual; Christine "Nina" Ko, an individual; and DOES 3-10.

Defendants.

CASE NO. CV-12-06972-FMO (JEMx)

**PLAINTIFFS' RENEWED
REQUEST PURSUANT TO RULE
55(a) THAT THE CLERK OF THE
COURT ENTER DEFAULT
AGAINST DEFENDANTS ROBERT
SIMONE AND CHRISTINE "NINA"
KO**

1 **TO ALL PARTIES, THEIR ATTORNEYS OF RECORD, AND THE CLERK
2 OF THE ABOVE-ENTITLED COURT:**

3 Pursuant to Federal Rule of Civil Procedure 55(a), plaintiffs American Rena
4 International Corp.; WanZhu “Kathryn” Li; and Robert M. Milliken hereby renew
5 their request that the Clerk of the above-entitled Court enter default in this matter
6 against defendant **ROBERT SIMONE**, an individual, and **CHRISTINE “NINA” KO**, an
7 individual, on the ground that said defendants have failed to appear or otherwise
8 respond to Plaintiffs’ First Amended Complaint within the time prescribed by the
9 Federal Rules of Civil Procedure and this Court’s order of March 26, 2013. (Dkt.
10 107).

11 Pursuant to the Clerk’s June 7, 2013 direction (Dkt. 134), this request has
12 been revised to (i) make it clear that the names of the persons in this Request for
13 Entry of Default exactly match the names of the persons named in the complaint
14 (Robert Simone and Christine “Nina” Ko); (ii) clarify for the Clerk that the full
15 name of Robert Simone and Christine “Nina” Ko are noted on the proofs of service
16 filed with this Court; and (iii) further clarify for the Clerk the code sections and
17 Court orders pursuant to which service was effectuated on Robert Simone under this
18 Court’s Order entered at Dkt. 50 (Fed. R. Civ. Proc. 4(e)(1) and Cal. Civ. Proc.
19 Code § 413.30), in addition to the Federal Rule pursuant to which personal service
20 was effectuated on Christine “Nina” Ko (Fed. R. Civ. P. 4(e)(2)(a)).

21 I. **ROBERT SIMONE**

22 Plaintiffs filed their original Complaint in this action on August 13, 2012.
23 (Dkt. 1). On September 11, 2012, plaintiffs substituted Robert Simone as “Doe 1”
24 to the Complaint. (Dkt. 22). Because of Simone’s concerted efforts to conceal his
25 identity and physical location, this Court subsequently authorized e-mail service on
26 Simone of the “Summons, Complaint, Amended Complaint, and any other papers
27 required to be served upon Mr. Simone, including without limitation any motions,
28 applications, notices and discovery requests.” (Dkt. 50). This order was made

1 pursuant to Fed. R. Civ. Proc. 4(e)(1), which permits service of process by
2 “following state law for serving a summons in an action brought in courts of general
3 jurisdiction in the state where the district court is located or where service is made,”
4 and Cal. Civ. Proc. Code § 413.30, which provides that “summons [may] be served
5 in a manner which is reasonably calculated to give actual notice to the party to be
6 served and that proof of such service be made as prescribed by the court.”
7 Accordingly, plaintiffs served Simone with the Summons and Complaint by e-mail
8 on October 24, 2012. (Dkt. 53).

9 Because Simone did not appear or respond to the original Complaint within
10 the time prescribed by the Federal Rules of Civil Procedure, plaintiffs requested that
11 the Clerk of the Court enter Simone’s default as to the original Complaint on
12 November 16, 2012. (Dkt. 60). The Clerk entered Simone’s default as to the
13 original Complaint on December 11, 2012. (Dkt. 74).

14 On March 27, 2013, plaintiffs filed their First Amended Complaint (“FAC”)
15 (Dkt. 108). The FAC asserted new theories of liability and factual predicates, and it
16 added Christine “Nina” Ko as a defendant. *Id.* The FAC superseded the original
17 complaint (*see, e.g., Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992) (it is a
18 “well-established doctrine that an amended pleading supersedes the original
19 pleading.”)), and, because it added a defendant and asserted new theories of liability
20 and factual predicates, was required to be served on Simone under Fed. R. Civ. P.
21 5(a)(2). *See* FED. R. CIV. P. 5(a)(2) (“a pleading that asserts a new claim for relief
22 against [a party in default] must be served on that party under Rule 4.”). The filing
23 of the FAC, therefore, provided Simone with another opportunity to respond, and
24 required plaintiffs to seek a renewed entry of default as to Simone. *See Katzakian v.*
25 *Check Resolution Service, Inc.*, 2010 WL 5100912, at *3 (E.D. Cal. Dec. 15, 2010)
26 (“If Plaintiff is going to pursue a Motion for Default Judgment based on an amended
27 complaint, she shall obtain an entry of default from the Office of the Clerk based on
28 the amended pleading [.]”); *Best Western International, Inc. v. Melbourne Hotel*

1 *Investors, LLC*, 2007 WL 2990132, at *1 (D. Ariz. Oct. 11, 2007) (filing of
 2 amended complaint cured previous default entered by Clerk of Court); *Vanguard*
 3 *Financial Service Corp. v. Johnson*, 736 F. Supp. 832, 835 (N.D. Ill. 1990) (denying
 4 as moot plaintiff's motion for default judgment where amended complaint
 5 subsequently filed).

6 Accordingly, pursuant to this Court's order authorizing email service (Dkt.
 7 50); Fed. R. Civ. Proc. 4(e)(1); and Cal. Civ. Proc. Code § 413.30, plaintiffs served
 8 Robert Simone with the Summons and FAC by e-mail on April 1, 2013. The Proof
 9 of Service was filed with the Court as Dkt. 122. By this Court's order, (Dkt. 107),
 10 defendant Robert Simone was required to respond, answer or otherwise plead to
 11 plaintiffs' FAC by April 11, 2013. As of June 6, 2013, neither defendant Robert
 12 Simone nor anyone claiming to represent defendant Robert Simone has responded to
 13 the FAC or contacted plaintiffs or their counsel to request an extension of time to
 14 respond to plaintiffs' FAC.

15 A second entry of default against Mr. Simone is therefore appropriate.

16 II. **CHRISTINE "NINA" KO**

17 Christine "Nina" Ko was substituted as the defendant previously sued under
 18 the fictitious name of Doe 2 on March 27, 2013. (Dkt. 108). Christine "Nina" Ko
 19 was personally served with the Summons and FAC on April 5, 2013 pursuant to
 20 Fed. R. Civ. P. 4(e)(2)(a), and plaintiffs filed the Proof of Service as Dkt. 121.
 21 Pursuant to Fed. R. Civ. Proc. 12, Ko was required to respond, answer or otherwise
 22 plead to plaintiffs' FAC by April 26, 2013. As of June 6, 2013, neither defendant
 23 Christine "Nina" Ko nor anyone claiming to represent defendant Christine "Nina"
 24 Ko has responded to the FAC or contacted plaintiffs or their counsel to request an
 25 extension of time to respond to plaintiffs' FAC.

26 The above-stated facts are set forth in the accompanying Declaration of Ryan
 27 Q. Keech filed herewith. Because defendants Robert Simone and Christine "Nina"
 28 Ko have failed to "plead or otherwise defend" in response to plaintiff's First

1 Amended Complaint, plaintiffs now request that the Clerk of the Court enter default
2 against Simone and Ko pursuant to Fed. R. Civ. Proc. 55(a).

3

4 DATED: June 14, 2013

5 QUINN EMANUEL URQUHART &
6 SULLIVAN, LLP

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8

9 By

10 Bruce E. Van Dalsem

11 Attorneys for American Rena International
12 Corp.; WanZhu "Kathryn" Li; Robert M.
13 Milliken

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quinn emanuel

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 865 South Figueroa Street, 10th Floor, Los Angeles, California 90017-2543.

On June 14, 2013, I served true copies of the following document(s) described as **PLAINTIFFS' RENEWED REQUEST PURSUANT TO RULE 55(a) THAT THE CLERK OF THE COURT ENTER DEFAULT AGAINST DEFENDANTS ROBERT SIMONE AND CHRISTINE "NINA" KO; DECLARATION OF RYAN Q. KEECH** on the interested parties in this action as follows:

<p>Leon E. Jew JEW & ASSOCIATES 5776 Stoneridge Mall Rd., Ste. 288 Pleasanton, CA 94588 ljewpt@yahoo.com SERVICE VIA MAIL</p>	<p>Counsel for Defendants SIS-JOYCE INT'L CO., LTD.; ALICE "ANNIE" LIN</p>
<p>CHRISTINE "NINA" KO 773 Barnum Way, Monterey Park, CA 91754 christineko7@yahoo.com SERVICE VIA MAIL</p>	<p><i>Defendant</i></p>
<p>ROBERT SIMONE 269 S. Beverly Drive, Box 121 Beverly Hills, CA 90212 robsimonetalks@yahoo.com submitmystuff@yahoo.com renausal@gmail.com SERVICE VIA E-MAIL</p>	<p><i>Defendant</i></p>

BY MAIL: Pursuant to Fed. R. Civ. Proc. 5(b)(2), I deposited such document(s) in a box or other facility regularly maintained by FedEx, or delivered such document(s) to a courier or driver authorized by FedEx to receive documents, in sealed envelope(s) or package(s) designated by FedEx with delivery fees paid or provided for, addressed to Sis-Joyce Intl. Co., Ltd., Alice "Annie" Lin, and Christine "Nina" Ko.

BY E-MAIL: Pursuant to this Court's order permitting service of Robert Simone via email of "the Summons, Complaint, Amended Complaint, and any other papers required to be served upon Mr. Simone," (Dkt. 50), I successfully attached true and correct .pdf copies of such documents to e-mails sent to the last known e-mail addresses known to be utilized by the Robert Simone. By Fed. R. Civ. Proc. 4(e)(1),

1 service of process is permitted by “following state law for serving a summons in an
2 action brought in courts of general jurisdiction in the state where the district court is
3 located or where service is made,” and Cal. Civ. Proc. Code § 413.30 provides that
4 “summons [may] be served in a manner which is reasonably calculated to give
actual notice to the party to be served and that proof of such service be made as
prescribed by the court.”

5 I declare that I am employed in the office of a member of the bar of this Court
6 at whose direction the service was made.

7 Executed on June 14, 2013, at Los Angeles, California.

8 /s/ Ryan Keech
9 Ryan Keech

quinn emanuel

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